

JD

35

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIASENTRY SELECT INSURANCE COMPANY
and SENTRY INSURANCE A MUTUAL
COMPANY,

Plaintiffs.

v.

LBL SKYSYSTEMS (U.S.A.), INC.,
ST. PAUL GUARANTEE INSURANCE
COMPANY, SOLERA CONSTRUCTION,
INC., DCM ERECTORS, INC., ERNST &
YOUNG, INC., RAYMOND CHABOT INC.,
LINDA ANGELLO as COMMISSIONER OF
THE NEW YORK STATE DEPARTMENT
OF LABOR, ANDREW W. ERISTOFF as
COMMISSIONER OF THE NEW YORK
STATE DEPARTMENT OF TAXATION
AND FINANCE and LAURENTIAN BANK
OF CANADA,

Defendants.

Civil Action No.: 06-4779

FILED

Clerk
Clerk**STIPULATION AND ORDER GRANTING INTERPLEADER RELIEF,
DIRECTING INTERPLEADER AMONG DEFENDANTS AND
SETTING APPLICATION FOR PLAINTIFFS' FEES AND EXPENSES**

Upon the Interpleader Complaint by interpleader plaintiffs Sentry Select Insurance Company ("Sentry Select") and Sentry Insurance A Mutual Company ("Sentry Insurance"), filed on October 25, 2006 (Docket No. 1); and upon the Order Granting Preliminary Injunction And Setting Motion For Interpleader Relief dated November 8, 2006 (Docket No. 21); and upon Exhibits "1" through "3" annexed to the Corrected Joint Report Pursuant To October 26, 2006 Order Of Court (Docket No. 17), which contain

waivers of any right to participate in these proceedings by defendants Andrew W. Eristoff as Commissioner of the New York State Department of Taxation and by Raymond Chabot, Inc., as well as the Satisfaction of Judgment by defendant Linda Angello as the Commissioner of the New York State Department of Labor of that judgment upon which an interest by that defendant was alleged in the Interpleader Complaint; and upon Exhibits "1," "2" and "3" to the Third Joint Report submitted on November 17, 2006, which contain waivers of any right to participate in these proceedings by defendants The Laurentian Bank of Canada and Ernst & Young, Inc., as well as a confirmation from the Office of the Attorney General of State of New York of the satisfaction of the judgment in favor of the Commissioner of Labor of the State of New York referred to in the interpleader complaint and of that Commissioner's decision not to appear in this interpleader action; and

Upon the consent of the interpleader plaintiffs, represented by Mark S. Gamell (admitted pro hac vice) of Torre, Lentz, Gamell, Gary & Rittmaster, LLP, Jericho, New York, and Eugene Hamill of Lavin, O'Neil, Ricci, Cedrone & DiSipio., Philadelphia, Pennsylvania; and upon the consent of the defendants who remain interested in these proceedings, to wit: LBL Skysystems (U.S.A.), Inc. (represented by Stuart H. Sobel and H. Hugh McConnell (both admitted pro hac vice) of Siegfried, Rivera, Lerner, Delatorre & Sobel, P.A., Coral Gables, Florida); St. Paul Guarantee Insurance Company (represented by Laura M. Vasey and Walter Curchack (both admitted pro hac vice), of Loeb & Loeb, LLP, New York, New York); and Solera Construction, Inc. and DCM Erectors, Inc. (represented by Victor A. Young of Obermeyer Rebmann Maxwell &

Hippel LLP, Philadelphia, Pennsylvania, Ray L. LeFlore (pending admission pro hac vice), New York, New York and Edward J. Henderson (pending admission pro hac vice) of Torys LLP, New York, New York); and upon all the prior proceedings heretofore had herein,

NOW, this ~~20th~~^{21st} day of November, 2006, upon the stipulated consent of the foregoing parties and for good cause shown, it is therefore hereby **ORDERED AND DECREED** that:

1. The Court finds that by reason of the letters sent by or on behalf of defendants Andrew W. Eristoff as Commissioner of the New York State Department of Taxation, Raymond Chabot, Inc., Linda Angello as the Commissioner of the New York State Department of Labor, The Laurentian Bank of Canada and Ernst & Young, Inc. in response to the Emergency Motion, Order To Show Cause and TRO, Summons and Complaint in this action, which letters are attached as exhibits to the Joint Reports submitted to this Court, the foregoing defendants have waived any claim to the funds at issue in this interpleader matter as well as waived the right to appear and participate in these proceedings, and accordingly any reference to "defendants" in the balance of this Stipulation And Order shall refer to the remaining defendants who have not so waived.

2. Defendants are required and decreed to interplead together that it may be ascertained in such manner as this court may direct to which of the defendants the proceeds due or to become due under that certain judgment rendered in Case No. 02-5379-JD pending in this Court (the "LBL/APG Action") and entered on or about September 8, 2006 (the "LBL Judgment"), or any further sums that may become finally

due in the LBL/APG Action, shall be paid, and in furtherance of same each and every one of the defendants shall serve and file their verified Cross-Claim In Interpleader to the aforesaid funds, setting forth such party's claim and entitlement to payment and priority, on or before December 11, 2006;

3. Interpleader plaintiffs are hereby directed to deposit with the law firm of Lavin, O'Neil, Ricci, Cedrone & Disipio, as Escrow Trustee hereunder, within ten (10) days of the date of this Order, the sum of \$1,743,367.32, plus per diem interest of \$238.22 from November 9, 2006 to the date of deposit, that being the sum presently due under the LBL Judgment (hereinafter, the "Escrow Fund"), which funds the Escrow Trustee shall immediately deposit into a separate interest bearing escrow account at a federally insured institution located within the Eastern District of Pennsylvania the title of which account shall include the phrase "As Interpleader Trustee," and which Escrow Fund the Escrow Trustee shall not transfer, release or disburse except upon Order of this Court, and from which Escrow Fund the reasonable fees, costs and expenses of the Escrow Trustee shall be paid upon application to and approval by the Court upon notice to all defendant parties;

4. Immediately upon the Escrow Trustee's deposit of the Escrow Funds pursuant to paragraph "2" hereinabove:

a. all further obligation of interpleader plaintiffs Sentry Select and Sentry Insurance for the LBL Judgment, or for any pre- or post-judgment interest accrued or accruing thereupon, shall cease, and interpleader plaintiffs Sentry Select and Sentry Insurance shall thereupon be relieved, released and discharged from any further

obligation or liability for such amounts under the LBL Judgment or that certain Supersedeas Bond dated September 15, 2006, issued by interpleader plaintiff Sentry Insurance, as surety, in the sum of \$ 1,900,000.00, which was docketed on September 18, 2006 as document number 237 in the LBL/APG Action (the "Sentry Supersedeas Bond");

b. upon the filing of a verified statement by the Escrow Trustee attesting to the deposit of the Escrow Funds pursuant to paragraph "2" hereinabove, the Clerk of the Court shall mark the LBL Judgment "Satisfied" in the books and records of the Court;

c. upon the filing of a verified statement by the Escrow Trustee attesting to the deposit of the Escrow Funds pursuant to paragraph "2" hereinabove, the Sentry Supersedeas Bond shall be deemed discharged and canceled, and the Clerk of the Court shall return the original Supersedeas Bond to Sentry Insurance, care of Mark S. Gamell, Esq., Torre, Lentz, Gamell, Gary & Rittmaster, LLP, 100 Jericho Quadrangle, Suite 309, Jericho, New York 11753-2702;

d. all defendants, and each of them, their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with them, shall be permanently enjoined from instituting, continuing, commencing, filing, continuing or engaging in any enforcement action or activity of any kind against either of the interpleader plaintiffs with respect to or based upon the LBL Judgment or the Sentry Supersedeas Bond, or any further action to enforce the LBL Judgment or the Sentry Supersedeas Bond; and

e. all defendants and each of them, their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with them, shall immediately arrange for the cancellation, release and/or discharge, as appropriate, of any and all executions and other enforcement documents issued or filed against Sentry Select and Sentry Insurance, or either of them, in relation to the LBL Judgment or the Sentry Supersedeas Bond, including but not limited to any registration of the LBL Judgment in any other court or jurisdiction;

5. As no costs have yet been taxed in connection with the LBL Judgment, and as a pending application by LBL for an award of attorney fees and expenses in the LBL/APG Action has not yet been determined, plaintiff Sentry Select may, at its election, pay such sums, if any, that the Court in the LBL/APG Action hereafter adjudicates are finally due in favor of LBL and against Sentry Select and with respect to which a judgment becomes final, by making a deposit, upon written letter notice to the Court (which shall also notify the Court of any additional parties in interest in any such funds) in such amount, and in the same manner as provided in paragraph "2" above, and, by the making of such deposit, at such time, all further obligations of Sentry Select for such amount, or for any interest accruing thereupon, if any, shall cease and plaintiff Sentry Select shall thereupon be relieved, released and discharged from any further obligation or liability for such amounts, and the defendants (together with any further parties in interest who may be added to this interpleader action in respect of such funds by way of Supplemental Complaint) shall be required to interplead together as the Court may thereafter direct, unless at the time such payment would otherwise be made this

Interpleader Action shall have been closed, dismissed or otherwise finally concluded, in which case all rights and defenses of Sentry Select are deemed fully reserved;

6. Sentry Select and Sentry Insurance, as interpleading plaintiffs, are to be allowed reasonable attorney fees, costs and expenses from the Escrow Fund, and shall make their application therefor, upon notice to all defendants remaining of interest in this action, on or before 12/11/06, 2006, with any opposing papers to be served and filed on or before 12/27, 2006, and reply papers, if any, to be served and filed on or before 1/5, 2007, and

7. By stipulating and consenting to the entry of this Order:

a. all defendants who have not waived any interest in these proceedings consent and agree that the Court has jurisdiction of the parties and of the subject matter by reason of 28 U.S.C. § 1332(a) and Rule 22 of the Federal Rules of Civil Procedure, as the amount in controversy exceeds \$75,000.00 and venue is proper under 28 U.S.C. §1391;

b. defendants Solera Construction, Inc. and DCM Erectors, Inc. reserve, and do not waive, such rights as they may have to seek the transfer of the venue of this interpleader action and the Escrow Fund, on any appropriate basis, to the United States District Court for the Eastern District of New York; and

c. all defendants remaining of interest in this action, other than Solera Construction, Inc. and DCM Erectors, Inc., reserve, and do not waive, such rights as they may have to oppose any application to seek the transfer of the venue of this interpleader action and the Escrow Fund.

7. The time for defendants Solera Construction, Inc. and DCM Erectors, Inc. to answer the the complaint in interpleader is extended through and including December 11, 2006.

8. For purposes of this Stipulation, facsimile signatures may be treated as originals. This Stipulation may be signed in counterparts, and all counterparts taken together shall constitute a single original.

STIPULATED & AGREED TO THIS ___ day of November, 2006:

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP

Counsel for Plaintiffs Sentry Select Insurance

Company and Sentry Insurance A Mutual Company

By: 

Mark S. Gamell, (*pro hac vice*)

100 Jericho Quadrangle, Suite 309

Jericho NY 11753-2702

Tel. (516) 240-8900

STIPULATED & AGREED TO THIS ___ day of November, 2006:

LAVIN, O'NEILL, RICCI, CEDRONE & DISIPIO

Counsel for Plaintiffs Sentry Select Insurance

Company and Sentry Insurance A Mutual Company, and

As Escrow Trustee Hereunder

190 North Independence

Mall West, Suite 500, 6th and Race Streets

Philadelphia, Pennsylvania 19106

Tel. 215-627-0303

By: _____

Eugene Hamill (eh9834)

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
SIEGFRIED, RIVERA, LERNER, DE LA TORRE & SOBEL, P.A.
Counsel for Defendant LBL Skysystems (USA), Inc.

7. The time for defendants Solera Construction, Inc. and DCM Erectors, Inc. to answer the the complaint in interpleader is extended through and including December 11, 2006.

8. For purposes of this Stipulation, facsimile signatures may be treated as originals. This Stipulation may be signed in counterparts, and all counterparts taken together shall constitute a single original.

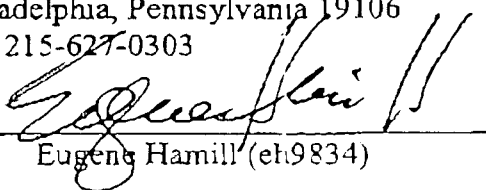
STIPULATED & AGREED TO THIS ___ day of November, 2006:

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP
*Counsel for Plaintiffs Sentry Select Insurance
Company and Sentry Insurance A Mutual Company*

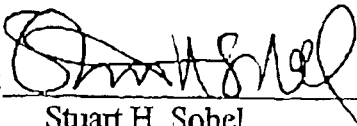
By: _____
Mark S. Gamell (*pro hac vice*)
100 Jericho Quadrangle, Suite 309
Jericho NY 11753-2702
Tel. (516) 240-8900

STIPULATED & AGREED TO THIS 11 day of November, 2006:

LAVIN, O'NEILL, RICCI, CEDRONE & DISIPIO
*Counsel for Plaintiffs Sentry Select Insurance
Company and Sentry Insurance A Mutual Company, and
As Escrow Trustee Hereunder*
190 North Independence
Mall West, Suite 500, 6th and Race Streets
Philadelphia, Pennsylvania 19106
Tel. 215-627-0303

By: 
Eugene Hamill (eh9834)

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
SIEGFRIED, RIVERA, LERNER, DE LA TORRE & SOBEL, P.A.
Counsel for Defendant LBL Skysystems (USA), Inc.

By: 
Stuart H. Sobel
201 Alhambra Circle, 11th Floor
Coral Gables, FL 33134
Tel. (305) 442-3334

STIPULATED & AGREED TO THIS ___ day of November, 2006:
LOEB & LOEB, LLP
Counsel for Defendant St. Paul Guarantee Insurance Company

By: _____
Laura M. Vasey
345 Park Ave
New York, NY 10154
Tel. 212-407-4000

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
OBERMEYER REBMANN MAXWELL & HIPPEL LLP
Counsel for Defendants Solera Construction, Inc. and DCM Erectors, Inc.

By: _____
Victor A. Young
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Tel. (215) 665-3000

BY THE COURT:

JAN E. DUBOIS, J.

By: _____

Stuart H. Sobel
201 Alhambra Circle, 11th Floor
Coral Gables, FL 33134
Tel. (305) 442-3334

STIPULATED & AGREED TO THIS 17th day of November, 2006:
LOEB & LOEB, LLP

Counsel for Defendant St. Paul Guarantee Insurance Company

By: _____

Walter H. Curchack (admitted *pro hac vice*)
345 Park Ave
New York, NY 10154
Tel. 212-407-4000

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
OBERMEYER REBMANN MAXWELL & HIPPEL LLP

Counsel for Defendants Solera Construction, Inc. and DCM Erectors, Inc.

By: _____

Victor A. Young
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Tel. (215) 665-3000

BY THE COURT:

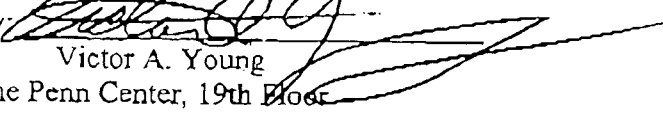
JAN E. DUBOIS, J.

By: _____
Stuart H. Sobel
201 Alhambra Circle, 11th Floor
Coral Gables, FL 33134
Tel. (305) 442-3334

STIPULATED & AGREED TO THIS ___ day of November, 2006;
LOEB & LOEB, LLP
Counsel for Defendant St. Paul Guarantee Insurance Company

By: _____
Laura M. Vasey
345 Park Ave
New York, NY 10154
Tel. 212-407-4000

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
OBERMEYER REBMANN MAXWELL & HIPPEL LLP
Counsel for Defendants Solera Construction, Inc. and DCM Erectors, Inc.

By:  _____
Victor A. Young
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Tel. (215) 665-3000

BY THE COURT:

JAN E. DUBOIS, J.

By: _____
 Stuart H. Sobel
 201 Alhambra Circle, 11th Floor
 Coral Gables, FL 33134
 Tel. (305) 442-3334

STIPULATED & AGREED TO THIS ___ day of November, 2006:
 LOEB & LOEB, LLP
Counsel for Defendant St. Paul Guarantee Insurance Company

By: _____
 Laura M. Vasey
 345 Park Ave
 New York, NY 10154
 Tel. 212-407-4000

STIPULATED & AGREED TO THIS ___ day of November, 2006 :
 OBERMEYER REBMANN MAXWELL & HIPPEL LLP
Counsel for Defendants Solera Construction, Inc. and DCM Erectors, Inc.

By: _____
 Victor A. Young
 One Penn Center, 19th Floor
 1617 John F. Kennedy Boulevard
 Philadelphia, PA 19103-1895
 Tel. (215) 665-3000

ENTERED

CLERK OF COURT

BY THE COURT:

Jan E. DuBois
 JAN E. DUBOIS, J.
 11/20/06

11/20/06 faxed
 Sobel, McConnell, Hamill,
 Sattzman, Curchack, Vasey
 Gamell, Young

11/22/06 n/m/col N.
 L. S. NWA K.